The mode of examination is the basis of all that is mischievous in the German procedure. It partakes of the nature of "cooking." The courts are indeed committees of prosecution. No cross-examination as to the motives of the witnesses, and the grounds of their statements, is permitted, as in England. Again, when a witness for the prosecution, like Wild, in the above case, breaks down, witnesses to *his* character are allowable, to reinstate his credit. Here Wild was held up as a good churchman and communicant! Further, hearsay evidence (when even the original testimony might have been had, if it was worth having) is recklessly entertained. Another egregious element for preventing justice is the bringing up the whole history and supposed character of the accused, as affording probabilities of his capacity for the particular crime laid to his charge. Such detail is sought for with the eye of suspicion, while there is great uncertainty which attends all investigations which belong to reputation, especially when the subject of the inquiries is not in a position to defend himself.

It is also well remarked, that when suspicion has been generally directed against a man the police follow the matter up, and are awake to all that weighs *against* the accused, but are blind to the counterbalancing evidence. "Trifles light as air" are so magnified and multiplied, that when they are brought before the court, shaped and colored, they assume an importance and significance utterly disproportionate to their real value. Barren facts assume the form of pregnant fallacies, and an unjudicial imagination constructs an ingenious and delusive fabric on a rotten and incoherent base.

COLLATERAL CONSANGUINITY.

Consanguinity or kindred is the connection or relation of persons descending from the same stock or common ancestor. Lineal consanguinity is the connection which subsists between persons of whom one is descended in a direct line from the other. Collateral kindred agrees with lineal in this, that they descend from the same stock or ancestor; but differing in this, that they do not descend one from the other.

The mode of computing degrees of consanguinity, according to the rule of the civil law, is as follows: We compute from the intestate to the common ancestor, the first not being counted, and then down to the person claiming the relation to the intestate—"*quot personæ tot gradus*,"—as many persons, so many degrees. The rule of the canon law is different, viz: "*quo gradu distat remotior a communi stipite, eodem distant inter se.*" We begin at the common ancestor, and reckon downward; and in whatsoever degree the two persons, or the more remote of them, is distant from the common ancestor, that is the degree in which they are related to each other.

Blackstone, in his Commentaries, (2 vol. 206,) treating of descents, says, the canon law is the rule of the common law; and in this he has been followed by Cruise and other legal writers; and yet in this statement, as applied to the doctrine of descents, singular as it may seem, he seems to be without authority and entirely mistaken. The only authority cited by the commentator or others is Co. Litt. 23 b., which is only to the effect, that on the question of the degrees of consanguinity within which marriage is (or was) lawful, the common law adopts the canon law rule. As marriage was an ecclesiastical matter, its validity to be determined by ecclesiastical law, this adoption of the canon law to that extent followed as of course. "*Nota in contractibus matrimonialibus computatio canonica est recepta, et hoc per decretalibus Innocentis tertii in concilio generali.*" Hal. MSS., cited by Hargrave in note 142 to Co. Litt. 23 b. The reason of establishing the rule by the canonists, was (says Lord Hardwicke) what is mentioned by Sir Joseph Jekyl in *Mentney* vs. *Petty*, Prec. Chan. 593, viz: the nearer they bring the relation, the greater the trade of dispensations. (*Thomas* vs. *Kitteriche*, 1 Vesey, 335.) The reason given for the adoption of the canon law rule to this extent seems to confine it to the instance expressed. In truth, there is no authority to show the adoption of the canon law rule of computation in England, beyond its application to matrimonial causes. The use, therefore, of the term—common law rule—to this mode of computation, is inapplicable.

Further, it was never adopted in England in ascertaining the

common law heir, because it has, in reality, no application to the rules of descent. Editors of Blackstone have stated this in the strongest terms. Christian says: "It is said, that the canon law computation has been adopted by the laws of England, yet I do not know of a single instance in which we have occasion to refer to it." Mr. Sweet, in his note to a late valuable edition of Blackstone, (21st Lond. Ed., 2 vol., 207,) says: "The student will do well to discard this explanation of the nature or degrees of kindred entirely from his recollection, while reading what follows upon the canons of descent, which are not in the least dependent upon, or illustrated by, the rules of the civil or of the canon law, as to the degrees of consanguinity."

If the canon law mode of computation has, in reality, never been adopted by the common law, as the means of ascertaining the heir at law, it cannot with fairness be alleged, that as the common law rule, it is the rule applicable under the statutes of descent in this country. It is, in fact, a rule entirely inapplicable, where the object of the law is to distribute property equally among persons standing in the same degree of proximity to the intestate. The mode of computing degrees of consanguinity by the civil law has, therefore, been generally followed in this country, as well in respect of descents to collateral kindred as under the statutes of distributions.

In New Jersey, under a statute, which prescribes that when any person shall die seized, &c., intestate, without leaving lawful issue, brother or sister, or issue of brother or sister, father or mother, &c., "and shall leave several persons all of equal degree of consanguinity to the person so seized, the lands, &c., shall then descend and go to the said several persons of equal degree of consanguinity to the person so seized, as tenants in common in equal parts," &c., with a proviso when the lands came by descent, devise, or gift from any ancestor, confining the descent to those of the blood of such ancestor. (N. J. Act of 1817, § 6.) Under this statute it has lately been attempted to urge that the canon law rule must be applied as the common law rule of computation in respect of descents; and that the words, "in equal degree of consanguinity," have a tech-

nical meaning, as contradistinguished from the words "next of kin," which last-mentioned phraseology is to be found in the statute of distributions. But there seems to be nothing in this argument. Next of kin is only another word for next in consanguinity, and "kinsmen" is an exact translation of the word "*consanguinii.*" The real ground for the adoption of the civil law rule of computation, under the statute of distributions, was simply because the policy of equal distribution to persons standing in the same degree of proximity to the intestate was adopted: a principle inconsistent with the canon law rule. Our statutes of descent, in their spirit, are entirely inconsistent with the policy of the English law of descent. The English law seeks for a single person—the heir at law. Our statutes seek to distribute the estate, in respect of collaterals, among all next of kin and in equal degree of consanguinity. The results would be very incongruous in attempting to apply the canon law rule. Thus, living uncles and their children, as also the children of deceased uncles, being all in the second degree, under that rule of computation would take as tenants in common in equal parts; for, under the sixth section of the statute of New Jersey, the collateral heirs take *per capita* only. But the civil law rule of computation is generally understood to be the rule adopted in New Jersey. It was so lately expressly decided by Chancellor Green (then Chief Justice) in December, 1859, when, on application to him by a cousin to divide lands, he held that the lands of an intestate went to living uncles, to the exclusion of the children of deceased uncles and aunts. C.

RECENT AMERICAN DECISIONS.

In the United States Circuit Court.—New Jersey District.

In Ejectment.

DEN EX. DEM. ROBERTS AND WIFE ET AL. *vs.* MOORE.

1. The act of limitations of New Jersey, limiting the right of entry on lands to twenty years, provides that in case of certain disabilities, the time during which the person who shall have the right of entry, shall be under any such disability, shall not be taken or computed as part of said period of twenty years. *Held,* that when the statute has once begun to run, it will continue to run over all subsequent disabilities.